

Request for an OPEGA review of the Board of Licensure for Professional Land Surveyors Information Requested by the GOC at the December 3, 2015 GOC Meeting

At its meeting on December 3, 2015, the Government Oversight Committee reviewed a request to schedule an OPEGA review of the Board of Licensure for Professional Land Surveyors (Board). The issue raised in the request involves the Board's effectiveness in addressing complaints filed against licensed surveyors.

According to the Department of Professional and Financial Regulation (DPFR), the Board's purpose is to protect the public against dishonest or unethical practitioners, and practitioners who have fallen below minimum standards of competence in the practice of their profession. The Board's authority is limited to taking actions with respect to the licensee's license. The Board lacks jurisdiction to resolve civil disputes between the licensee and a complainant.

The Government Oversight Committee asked OPEGA to gather additional information regarding the Board of Licensure for Professional Land Surveyors before the GOC considered the request further. To that end, OPEGA reviewed the Board's complaint process, and reviewed all complaints processed by the Board from 1/1/2012 to 12/31/2015, based on the date the case was concluded.

COMPLAINT PROCESS

The general complaint process for all Boards under the Department of Professional and Financial Regulation's purview, including the Board of Licensure for Professional Land Surveyors, is available in more detail on the DPFR's website, and is as follows:

- Complaint filed
- Documents Exchanged (Licensee has opportunity to respond to complaint, Complainant has opportunity to respond to Licensee response)
- The Board's Complaint Committee investigates and makes a recommendation to the Board to be processed at a Board meeting. The recommendation may be to:
 - Dismiss the complaint
 - Proceed with a consent agreement
 - Schedule the matter for an adjudicatory hearing held before the Board
- The Board may impose any of the following sanctions through the adjudicatory hearing process:
 - Issue a warning, censure or reprimand to a licensee
 - Suspend a license for up to 90 days per violation or occurrence
 - Revoke a license
 - Impose a civil penalty of up to \$1,500 per violation or occurrence
 - Impose conditions of probation on a licensee
 - Assess the licensee for the cost of transcribing and reproducing the administrative record in the event of appeal
- The licensee can appeal the adjudicatory hearing Decision and Order to the court. The complaint committee and the complainant cannot appeal.
- The Department has a computerized licensing system which includes data regarding licensing matters as well as cases involving licensees.

- Any case information is retained with the licensee's entry into the database/licensing system. Anyone can research a licensee online at the department's website. Disciplinary action for a particular licensee is viewable through a link as well.

COMPLAINT CASE ANALYSIS

There were 26 complaint cases involving 20 different surveyors processed by the Board from January 1, 2012 through December 31, 2015, which OPEGA reviewed in detail. Three complaints were against one surveyor, and four other surveyors each had two complaints against them. There were no repeat complainants. Currently there are 542 licensed professional surveyors and 99 surveyors in training in Maine.

Nineteen of 26 cases (73%) were dismissed by the Board without an adjudicatory hearing. Each of these decisions contained the following language: "The Board concluded that there was no evidence that the Licensee violated Board law or rule."

Three of the cases (12%) were dismissed by the Board with a letter of guidance without an adjudicatory hearing, and included the following language: "this letter of guidance is not a formal proceeding and does not constitute an adverse disciplinary action of any form".

Adjudicatory Hearings were held for four of the cases (15%), resulting in one Letter of Guidance, three monetary fines, two warnings, three reprimands and one 90 day license suspension. Three of the adjudicatory hearings resulted in more than one action.

		COMPLAINT CASES AGAINST LICENSED SURVEYORS PROCESSED								
		BY THE BOARD-JANUARY 2012 THROUGH DECEMBER 2015*								
Year	Total Complaints	Dismissed by Board w/o Hearing	Dismissed by Board w/ltr of guidance, w/o hearing	Hearing: Warning	Hearing: Reprimand	Hearing: 90 day license suspension	Hearing: Monetary Fine	Hearing: Letter of Guidance	Actions	Hearings
2015	8	4	2	1	1	1	2		11	2
2014	4	2		1	2		1	1	7	2
2013	3	3							3	0
2012	11	10	1						11	0
Totals	26	19	3	2	3	1	3	1	32 Actions**	4 Hearings
	20 Different surveyors							**Actions--some of the cases resulted in more than one action		
	5 Surveyors with more than one complaint									
	No Repeat Complainants									
*OPEGA analysis of complaint case data provided by the Department of Professional and Financial Regulation										

OPEGA also noted there were three consent agreements occurring in the time period that were not associated with a filed complaint. We reviewed all of these agreements which were between the Board, the Maine Attorney General's office and licensed surveyors. Each of the consent agreements involved improper reporting of continuing education requirements, and each resulted in a monetary fine. None of the three consent agreements involved any of the 20 surveyors in the 26 complaint cases.

A search on DPFR's Regulatory Licensing and Permitting website shows there were eight total adjudicatory hearings held by the Board since January 1, 2005. The website search also shows there were ten consent agreements entered into since January 1, 2005 – five of these were associated with complaints processed by the Board prior to the period covered by OPEGA's complaint case analysis.